FILE COPY

FILED

AUG 8 1940

In The

Supreme Court of the United States

OCTOBER TERM, 1940

IN THE MATTER OF PITTSBURGH RAILWAYS COMPANY, Debtor.

NO. 362

MONONGAHELA STREET RAILWAY COMPANY and PITTSBURGH AND BIRMINGHAM TRACTION COMPANY, Petitioners,

v.

JULES GUGGENHEIM ET AL.

NO. 363

MONONGAHELA STREET RAILWAY COMPANY and PITTSBURGH AND BIRMINGHAM TRACTION COMPANY, Petitioners,

v.

CITY OF PITTSBURGH

NO. 364

MONONGAHELA STREET RAILWAY COMPANY and PITTSBURGH AND BIRMINGHAM TRACTION COMPANY, Petitioners,

v.

HORACE F. BAKER and JOHN A. BEATTIE, Protective Committee, etc.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, BRIEF, AND JOINDERS.

WM. S. MOORHEAD
A. W. HENDERSON
JUDSON A. CRANE
Attorneys for Petitioners

1752 Oliver Building
Pittsburgh 22, Pa.

SMITH BROS. CO., INC., LAW PRINTERS, 431-433 BOULEVARD OF ALLIES, PITTSBURGH, PA.

SUBJECT INDEX

	PAGE
Petition for Writs of Certiorari	1
Matter Involved	2
Jurisdiction	7
Questions Presented	7
Reasons Relied on for Allowance of Writs	9
Prayer for Writs	13
Brief in Support of Petition	15
Opinions Below	15
Jurisdiction	15
Statement of the Case	15
Specifications of Error to be Urged	15
Summary of Argument	17
Argument	18
I. In so far as the decision purports to disregard the corporate entities of Petitioners and reorganize their properties as those of Debtor, it departs from the usual course of judicial proceedings and decides an important question of Federal Law, without judicial precedent, which should be settled by this Court	18
II. In so far as the decision treats the properties of Petitioners as the properties of Debtor, the Circuit Court has decided an important question of local law in a way in conflict with applicable local decisions, and in conflict with decisions of other Circuit Courts of Appeals and of this Court, as to the binding effect of local law, in determining property rights	21

PAGE

III. The treatment of leases as demises of possessory rights is provided for in the Bankruptcy Laws and is sustained by decisions of this Court in railroad reorganizations. In so far as the decision of the Circuit Court departs from such treatment, the exercise of this Court's power of supervision is called for..... 27

IV. In so far as the decision of the Circuit Court holds that, without filing and approval of petitions by or against them, Petitioners can be reorganized in bankruptcy or their properties dealt with as properties of a Debtor, the decision has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision..... 32

The purpose and subject-matter of Bankruptcy Reorganization 36

Conclusion 38

Joinders in the foregoing Petition for Writs of Certiorari 39

TABLE OF CITATIONS

Cases

PAGE

Benedict v. Ratner (1925), 268 U. S. 353..... 23

Chicago Rapid Transit Co., In re (1942), 129 F. (2d) 1 .....28, 30

Chicago, R. I. & Pac. Ry. Co., In re (1943), 50 Fed. Supp. 835 37

Citizens Passenger Railway Co. v. Public Service Commission (1921), 271 Pa. 39, 114 A. 642.... 21

Commonwealth ex rel. v. Union Traction Co. of Philadelphia et al. (1937), 327 Pa. 497, 194 A. 661.. 21

Corn Exchange Natl. Bank & Trust Co. v. Klauder (1943), 318 U. S. 434.....23, 24

Dioguardi v. Curran (1929), 35 F. (2d) 431..... 25

Erie R. R. v. Tompkins (1938), 304 U.S. 64..... 24

Finn v. 415 Fifth Ave. (1946), 153 F. (2d) 501..... 25

Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co. (1943), 318 U. S. 523..... 30

Holt v. Crucible Steel Co. of Amer. (1912), 224 U.S. 262..... 23

Kearns et al., In re (1925), 8 F. (2d) 437.....24, 25

Mangus v. Miller (1942), 317 U. S. 178..... 23

McCance et al. v. D. A. Schulte, Inc. of New York (1937), 91 F. (2d) 733..... 24

Miller v. McCray Refrigerator Co. (1942), 130 F. (2d) 873 24

PAGE

Monongahela Street Railway Co. v. Philadelphia Co. and Consolidated Traction Co. (1944), 350 Pa. 603, 39 A. (2d) 909 22

New York, New Haven & Hartford R. R. Co., In re (1943), 54 Fed. Supp. 595; (1945) 147 F. (2d) 40 30

New York Trust Co., as Trustee, etc., v. New York & Greenwood Lake Railway Co. (C.C.A. 3d), July 17, 1946 ..... 35, 36

Palmer v. Commonwealth of Massachusetts (1939), 308 U. S. 79 26

Palmer et al. v. Connecticut Railway & Lighting Co. (1941), 311 U. S. 544 29

Philadelphia Co. v. Dipple (1941), 312 U. S. 168 .. 12, 31

Price v. Gurney (1945), 324 U. S. 100 34

Reeves et al. v. Philadelphia Traction Co. et al. (1893), 152 Pa. 153, 25 A. 516 21

Sartorius v. Bardo (1938), 95 F. (2d) 387 36

Second Avenue Traction Co., for use v. United Traction Company of Pittsburgh (1937), 328 Pa. 257, 195 A. 25 22

Smith v. Hoboken Railroad, etc. (1946), 90 L. Ed. Adv. Ops. 880 30

Sweeney v. Medler (1935), 78 F. (2d) 148 24

U. S. v. Milwaukee R. T. Co. (1905), 142 Fed. 247 ... 9, 18

Statutes

UNITED STATES PAGE

Bankruptcy Act

Section 60 (a), 11 U.S.C.A. § 96 (a)..... 24

Section 77, 11 U.S.C.A. § 205..... 28

Section 77 B, 11 U.S.C.A. § 207..... 4

Chandler Act, Chapter X

Section 106 (13) 11 U.S.C.A. § 506..... 34

Section 106 (7), 11 U.S.C.A. § 506 (7)..... 27

Section 111, 11 U.S.C.A § 511..... 13

Section 116 (1), 11 U.S.C.A. § 516 (1).....4, 28

Section 126, 11 U.S.C.A. § 526..... 33

Section 129, 11 U.S.C.A. § 529..... 41

Section 130, 11 U.S.C.A. § 530.....13, 33

Section 131, 11 U.S.C.A. § 531.....13, 34

Section 202, 11 U.S.C.A. § 602..... 28

Section 216, 11 U.S.C.A. § 616.....23, 28

Judicial Code, Sec. 240 (a) 28 U.S.C.A. § 347.. 7

PENNSYLVANIA

Act of May 15, 1895, P. L. 63, 67 P. S. 1279.... 21

Act of May 15, 1895, P. L. 64, 15 P. S. 1894.... 21

Act of May 15, 1895, P. L. 65, 15 P. S. 1897.... 21

NEW YORK

27 McKinley; Consolidated Laws of New York, par. 81 29

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

IN THE MATTER OF PITTSBURGH RAILWAYS COMPANY, Debtor.

NO. .....

MONONGAHELA STREET RAILWAY COMPANY and PITTSBURGH AND BIRMINGHAM TRACTION COMPANY, Petitioners,

v.

JULES GUGGENHEIM ET AL.

NO. .....

MONONGAHELA STREET RAILWAY COMPANY and PITTSBURGH AND BIRMINGHAM TRACTION COMPANY, Petitioners,

v.

CITY OF PITTSBURGH

NO. .....

MONONGAHELA STREET RAILWAY COMPANY and PITTSBURGH AND BIRMINGHAM TRACTION COMPANY, Petitioners,

v.

HORACE F. BAKER and JOHN A. BEATTIE, Protective Committee, etc.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of MONONGAHELA STREET RAILWAY COMPANY, a Corporation, and PITTSBURGH AND BIRMINGHAM TRACTION COMPANY, a Corporation, respectfully shows:

Matter Involved.

The Matter Involved arises out of proceedings for the reorganization of a debtor under Section 77B of the Bankruptcy Act and the Chandler Act.

The Debtor, Pittsburgh Railways Company, for many years has operated street railways wholly intrastate in Pittsburgh and environs. The operated lines are of three categories: (1) lines owned by Debtor; (2) lines leased to Debtor; (3) lines leased to other corporations and operated by Debtor under short-term operating agreements with the lessees.

This Petition involves the status, with respect to the reorganization proceedings, of two lessor corporations* whose lines are within the third category.

The Petitioners, respectively, own, and formerly operated, completely integrated and fully equipped street railway systems extending in and from Pittsburgh into suburban territory, boroughs, and other cities (SMR** pars. 62, 71, 80, R.*** 632, 636, 638).

In 1902, Petitioners leased their respective systems for 900 years to two different corporations, both controlled by Philadelphia Company. The respective lessees covenanted to pay rentals, taxes, and bond interest, to operate the lines, and to keep them fully equipped with modern facilities. The leases were duly recorded in the office for recording deeds, leases, etc. They contain defeasance clauses, providing for their termination in case

---

*Hereinafter referred to, separately, as Monongahela and Birmingham, and, together, as Petitioners.

** SMR refers to Special Master's Report.

*** R. refers to the Record as printed in the court below, together with the proceedings and opinion of that court, heretofore furnished to the Clerk of this Court.

of default in the lessee's covenants and the surrender of the demised property, together with all additions, improvements, and substitutions.

Petitioners have caused their properties to be continuously maintained and operated for public use, under their respective leases from the times they were made to the present.

Philadelphia guaranteed the covenants of the lessees.

The material parts of the two leases and the guaranties appear in R. 885-909.

The two lessee corporations made operating agreements with Pittsburgh Railways, each for the term of five years and, thereafter, terminable on three months' notice (SMR pars. 164, 166, R. 654, 655).

All the shares of stock of Pittsburgh Railways, Debtor, was, and now is, owned by Philadelphia Company (SMR par. 18, R. 615).

Petitioners are not now, and never have been, owned or controlled by Philadelphia Company, by Debtor, or by any of their subsidiaries. The stock of Petitioners is entirely owned by the public, with the exception of a 24.7% stock interest in Monongahela, acquired by Philadelphia Company and its non-railway subsidiaries after the institution of the present bankruptcy proceedings. (SMR par. 26, R. 618). Both Petitioners are solvent and able to meet their debts as they mature (SMR par. 57, R. 631; Opinion,* R. 944).

On May 10, 1938, Debtor filed a petition for reorganization under Sec. 77B of the Bankruptcy Act [11

---

* Opinion refers to the opinion of the Circuit Court of Appeals below.

U.S.C.A. § 207], in the District Court of the United States for the Western District of Pennsylvania (SMR par. 1, R. 613).

Neither the leases made by Petitioners nor the operating agreements made by their respective lessees with Pittsburgh Railways have been affirmed or rejected by the Trustees under Section 116 (1) of the Bankruptcy Act [11 U.S.C.A. § 516 (1)].

On October 23, 1942, the City of Pittsburgh filed the petition with which we are here concerned (R. 40 a).

On November 27, 1942, the present Petitioners filed Motions to Dismiss the City's petition as to them (R. 17 a, R. 872-884). Decision on these motions was deferred by the Special Master until after hearings on the City's Petition (SMR par. IV, R. 611). Petitioners have never filed any claims in these bankruptcy proceedings and have taken no part therein, except in support of their respective Motions to Dismiss.

The City's petition asked the District Court to exercise jurisdiction over the properties of all so-called underlier companies, determine the rights, claims, and interests of all creditors and stockholders of said Underliers,* as persons having claims against or interests in the Debtor or its properties (R. 75 a).

---

*As used herein and in the Special Master's Report, the following terms are thus defined:

"Underliers", generally, are corporations owning properties in Debtor's possession through leases or operating agreements;

"Philadelphia Underliers" are subsidiaries of Philadelphia Company;

"Guaranteed Underliers" are lessor corporations whose leases are guaranteed by Philadelphia Company and include Monongahela and Birmingham.

The City's petition contained alternative prayers, including one to direct Petitioners to file voluntary petitions for reorganization in bankruptcy; but these prayers were not pressed or considered by the District Court (R. 76 a, Note; 133 a; and SMR par. 12, R. 614).

The District Court referred the petition to a Special Master who held hearings over a period of more than two years, and, on January 29, 1945, filed an exhaustive report containing Findings of Fact, Conclusions of Law, and a Recommendation that the petition of the City be dismissed.

The District Court adopted the Conclusions of Law of the Special Master, accepted his Findings of Fact, subject to a few unimportant modifications, and dismissed the City's petition (R. 148 a, 149 a).

Appeals to the Circuit Court of Appeals for the Third Circuit from the Decree of the District Court were taken by the City of Pittsburgh, Jules Guggenheim et al., and Horace F. Baker and John A. Beattie, Protective Committee etc. (R. 25 a).

In finding that the Master's report was full, complete, and most carefully done and that all parties had taken the facts as found by the Master, the Circuit Court of Appeals said:

> "The controversy before us relates only to the legal conclusions to be drawn from the facts found." (Opinion, R. 943).

The Conclusions of Law of the Special Master, adopted by the District Court (R. 148 a) appear in SMR, R. 836, 837. The Conclusions of the Special Master may be epitomized, as follows:

(1) The Court has jurisdiction to determine the rights, titles, and interests of the Debtor in the properties in the custody of the Court and to determine, to the extent necessary for the purposes of this reorganization proceeding, what are the rights, titles, and interests of the Underliers and their stockholders and creditors with respect to those properties;

(2) The facts do not justify the disregarding of the corporate entities of any of the Underliers;

(3) The leases made for terms of years, as between the parties or their creditors or for the purpose of reorganization of the leaseholder, under the Bankruptcy Laws, are not equivalent to conveyances in fee with reservations of liens or qualified titles as mere security for the payment of moneys;

(4) The properties which, in respect of legal titles, are owned by the Underliers are not the property of the Debtor within the meaning of the Bankruptcy Law;

(5) Without the filing and approval of petitions by or against the Underliers, as prescribed by Bankruptcy Laws, the District Court does not have jurisdiction to reorganize such Underliers or to deal with their properties as though they were the properties of a debtor, as that term is defined in the Bankruptcy Act;

(6) The petition of the City of Pittsburgh should be dismissed.

The Circuit Court of Appeals reversed the judgment of the District Court and remanded the case for further proceedings not inconsistent with the opinion of the Circuit Court of Appeals (Opinion, R. 952).

The Opinion of the Circuit Court states (R. 943):

> "Our problem at the present time is confined to a single but very important legal question. That question relates to the power of the court to grant the city's petition by pulling into the [re]organization, willy nilly, the underliers. * * *."

The Circuit Court does not state, however, how this is to be done.

The Trustee of Debtor petitioned the Circuit Court "to clarify and amplify its opinion and order" (R. 955, 964); but the petition was denied (R. 970).

In view of the statement made by the Circuit Court (Opinion, R. 943) that the controversy related solely to the legal conclusions of the District Court, the soundness of those conclusions is the question here involved.

Jurisdiction.

The Circuit Court of Appeals, on May 7, 1946, reversed the judgment of the District Court and remanded the case for further proceedings not inconsistent with its Opinion.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938; U.S.C.A., Title 28, Section 347.

Questions Presented.

Where a Pennsylvania corporation lawfully owning and operating a completely equipped street railway system, wholly intrastate, leases such properties for 900 years to a Pennsylvania traction company which oper-

ates, or causes to be operated, such properties as part of a general system of railways, all as authorized by Pennsylvania statutes, the lessee agreeing to operate, maintain, and keep in good repair the leased properties, fully equipped with the best and most improved equipment, and, upon termination of the lease, by time or default, to deliver to the lessor all of the demised properties, together with any substitutions, additions, and improvements thereto or thereon; and, thereafter, the lessee turns over possession of the leased properties to a street railway company for operation and maintenance as required by the lease, there being no control by the lessor of the lessee or operating company or by either of the latter of the lessor, directly or indirectly, by stock ownership or otherwise; can a court, in bankruptcy reorganization of the debtor operating company,—

(1) Disregard the corporate entity of lessor, for the purpose of reorganizing it with a debtor in bankruptcy proceedings, when the lessor is not owned or controlled by stock ownership or otherwise by debtor or any other corporation and when, to do so, would carry lessor's properties to public investors in its stock, and not to the debtor in the reorganization?

(2) Treat the properties of the lessor as the property of the debtor, contrary to the statutes and decisions of the court of last resort of Pennsylvania and in conflict with decisions of this Court, as to the binding effect of local law in bankruptcy proceedings?

(3) Treat the leases in a manner contrary to the provisions of the Bankruptcy Law, dealing with the treatment of leases?

(4) Reorganize the lessor in bankruptcy proceedings, without the filing of a petition for reorganization by or against it and in spite of the fact that the lessor is solvent and able to meet its debts as they mature, contrary to the express provisions of the Bankruptcy Laws?

Reasons Relied on for Allowance of Writs.

I.

The Circuit Court appears to express the opinion that the corporate entities of all the Underliers should be disregarded (Opinion, R. 951). The purpose seems to be to reorganize all the corporate Underliers in reorganization proceedings of the Debtor.

The Circuit Court does not claim that there is any judicial precedent for such a proceeding, in so far as Petitioners are concerned (Opinion, R. 950). It has, therefore, decided an important question of Federal Bankruptcy law which has not been, but should be, settled by this Court.

Furthermore, such a proceeding, in so far as Petitioners are concerned, would so far depart from the usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

If the entity of a corporation is disregarded, its stockholders are treated as an association of persons who own its properties (*U. S. v. Milwaukee R. T. Co.*, (1905), 142 Fed. 247, per Sanborn, J.).

But the shares of stock of Petitioners are owned by the public—not by Debtor or its subsidiaries.

The disregard of the corporate entities of Petitioners, therefore, would not bring them or their properties into the reorganization proceedings of the Debtor.

Petitioners are not controlled in any way by the Debtor or Philadelphia Company.

See further, Argument, page 18, *infra.*

II.

The Opinion of the Circuit Court appears to decide that property laws of the state where the property is situated are not controlling in bankruptcy proceedings (Opinion, R. 948).

In so far as the Opinion so holds, it decides an important question of local law, in conflict with applicable local decisions and in conflict with the decisions of other circuit courts of appeals, and of this Court, as to the binding effect of local law in determining property rights.

The leases made by Petitioners and the operation of the demised street railway lines, as parts of a general system, were authorized by Pennsylvania statutes. The leased properties are entirely within that State (See p. 21, *infra*).

The Supreme Court of Pennsylvania has held that such leases are valid demises of possessory rights and not conveyances of title (See pp. 21, 22, *infra*).

The Bankruptcy Acts provide that a plan of reorganization may deal with the property of the Debtor.

Circuit Courts of Appeals of the Second, Fourth, Eighth, and Tenth Circuits have held that, what the property of a debtor in bankruptcy consists of is to be

determined by the application of local law (See pp. 24-25, *infra*).

This Court has applied the same rule, not only to intercorporate relations, but also to the rights of creditors (See p. 23, *infra*).

To treat the properties of these Petitioners as the property of the Debtor, for the purpose of its reorganization in Bankruptcy, would be a taking of Petitioners' properties without due process of law in violation of the Fifth Amendment to the Constitution.

To upset the validity of long-term railroad and railway leases, guaranteed by other corporations, would be disastrous to the stockholders of the lessor corporations. Such stocks are widely held and are authorized investments for life insurance companies under the laws of New York (See p. 29, *infra*).

III.

In so far as the Opinion of the Circuit Court authorizes the treatment of the leases made by Petitioners as conveyances, or as something other than leases, it conflicts with the provisions of the Bankruptcy Laws and the application thereof by this Court and by Circuit Courts of Appeals of other Circuits.

For this reason, this Court's power of supervision is called for.

The Bankruptcy Laws provide how leases shall be treated in bankruptcy reorganization proceedings. They are not treated as conveyances; but as executory contracts which can be rejected and the demised properties returned to the lessors or affirmed (See pp. 27, 28, *infra*).

This Court and Circuit Courts of Appeals of other Circuits have applied this treatment of leases in railroad reorganizations in bankruptcy (See pp. 29, 30, *infra*).

The bankruptcy court can not make a new and different contract with a lessor without its consent (See p. 31, *infra*).

This Court has already indicated that the leases involved in this proceeding should be dealt with either by affirmance or disaffirmance: *Philadelphia Company v. Dipple* (1941), 312 U.S. 168, 174 (See p. 31, *infra*).

IV.

The Opinion of the Circuit Court states in effect (Opinion, R. 943) that the facts found by the Special Master are not disputed; but that the controversy relates only to the legal conclusions.

The fifth conclusion of law of the Special Master adopted by the District Court (R. 148 a) is, in effect, that, without the filing and approval of petitions by or against the several Underliers as prescribed by Bankruptcy Laws, the District Court does not have jurisdiction to reorganize such Underliers or to deal with their properties as though they were the properties of a debtor (SMR, R. 837).

In so far as the Circuit Court's Opinion holds to the contrary, it violates the requirements of the Bankruptcy Laws and so far departs from the usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

The Opinion of the Circuit Court proceeds on the theory that all the Underliers, including these Petitioners, can be reorganized in the present bankruptcy

proceedings or their properties dealt with, as if they were the properties of the Debtor, without compliance with the requirements of the Bankruptcy Laws (See p. 33, *infra*).

It is only by the filing of a petition for reorganization by a corporation, or by three or more of its creditors, that the court acquires jurisdiction—and then only over the debtor and its property [11 U.S.C.A. § 511]. (See p. 33, *infra*).

No such petition has been filed by or against Petitioners (See p. 33, *infra*).

The petition must state that the corporation is insolvent or unable to pay its debts as they mature [11 U.S.C.A. § 530] and, in the case of a creditor's petition, that the corporation has committed an act of bankruptcy [11 U.S.C.A. § 531].

It is not averred or pretended that such is the case with respect to either Petitioner. The contrary is indicated in the Opinion of the Circuit Court (R. 944) and in SMR par. 57, R. 631.

WHEREFORE, your Petitioners respectfully pray that writs of certiorari may issue out of and under the Seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court, on a date to be designated, a full and complete transcript of the Record of all proceedings in said Circuit Court of Appeals, in the cases entitled, "In the Matter of Pittsburgh Railways Company, Debtor", Appeals from Orders of the District Court of the United States for the Western District of Pennsylvania Dismissing Petition of City of Pittsburgh Relative to Underlier Companies, by City of Pittsburgh;

Jules Guggenheim et al.; Horace F. Baker et al., etc., Appellants, Nos. 8967, 8964, and 8996 October Term, 1945, to the end that said cases may be reviewed and determined by this Court, that the judgments and orders of the Circuit Court of Appeals for the Third Circuit may be reversed by this Court, and that your Petitioners may have such other and further relief as to this Court may seem proper.

MONONGAHELA STREET RAILWAY COMPANY, PITTSBURGH AND BIRMINGHAM TRACTION COMPANY.

By Wm. S. Moorhead

Wm. S. Moorhead,

A. W. Henderson

A. W. Henderson,

Judson A. Crane

Judson A. Crane,

Their Attorneys.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The Opinion of the District Court (McVicar, J.) is reported in 60 F. Supp. 600. It appears in the Record, at page 133 a.

The Opinion of the Circuit Court of Appeals for the Third Circuit (Goodrich, Circuit Judge) is reported in 155 F. (2d) 477. It appears in the Record, at page 939.

Jurisdiction.

See Petition for Writs of Certiorari, page 7, *supra*.

Statement of the Case.

See Petition for Writs of Certiorari (Matter Involved), pages 2 to 7, *supra*.

Specifications of Error To Be Urged.

I.

The Circuit Court of Appeals erred in so far as its Opinion purports to hold that the corporate entities of these Petitioners, Monongahela and Birmingham, should be disregarded and their properties brought into the reorganization proceedings of Pittsburgh Railways, Debtor, particularly in view of the fact that the shares of stock of Petitioners are not owned by Debtor, but by the public, and that the effect of the disregard of the corporate entities of Petitioners would be to treat their properties as the properties of their public stockholders —not of Debtor.

II.

The Circuit Court of Appeals erred in so far as its Opinion purports to treat the wholly intrastate street railway properties owned by Petitioners, and by them, respectively, leased for long terms to two traction companies, and operated by Debtor under short-term operating agreements, as the properties of the Debtor, contrary to property laws of Pennsylvania as established by decisions of its highest court, whereby lessors are held to own such property, subject only to demises of possessory rights, and as established by Pennsylvania statutes, authorizing the leases made by Petitioners and the operation of the demised railways as parts of a general system.

III.

The Circuit Court of Appeals erred in so far as it holds that what constitutes property of a debtor in bankruptcy reorganization proceedings is not to be determined by the applicable law of the State in which the property is situated, in conflict with decisions of this Court in bankruptcy proceedings.

IV.

The Circuit Court of Appeals erred in so far as its Opinion purports to authorize the treatment of the leases made by Petitioners in a manner contrary to the specific provisions of the Bankruptcy Reorganization Laws with respect to the treatment of leases.

V.

The Circuit Court of Appeals erred in so far as its Opinion purports to hold that Petitioners can be reorganized in bankruptcy proceedings, without the filing

and approval of petitions by or against them and where Petitioners are solvent corporations, able to pay their debts as they mature.

VI.

The Circuit Court of Appeals erred in so far as its Opinion decides that a plan of reorganization of the Debtor may deal with the properties of Petitioners, as if they were the properties of the Debtor, in violation of the Fifth Amendment to the Constitution of the United States, wherein it is provided:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *."

VII.

The Circuit Court of Appeals erred in so far as its Opinion overrules the Conclusions of Law made by the Special Master and adopted by the District Court, in so far as these Petitioners are concerned.

VIII.

The Circuit Court of Appeals erred, in so far as these Petitioners are concerned, in reversing the judgment of the District Court and remanding the case for further proceedings not inconsistent with the Opinion of the Circuit Court of Appeals.

Summary of Argument.

Under "Reasons Relied on for Allowance of Writs" (p. 9, *supra*), our Argument is epitomized with references thereto, rendering, we believe, a Summary thereof superfluous.

ARGUMENT.

I.

In So Far as the Decision Purports to Disregard the Corporate Entities of Petitioners and Reorganize Their Properties as Those of Debtor, It Departs from the Usual Course of Judicial Proceedings and Decides an Important Question of Federal Law, Without Judicial Precedent, Which Should Be Settled by This Court.

The Circuit Court appears to express the opinion that the corporate entities of the Underliers should be disregarded (Opinion, R. 951, 952). The apparent objective of such a course would be to bring the properties of the Underliers into the present reorganization proceedings, as the properties of the Debtor.

If the entity of a corporation is disregarded, it is treated as an association of persons, who are regarded as the owners of the property of the corporation (*U.S. v. Milwaukee R. T. Co.*, (1905), 142 Fed. 247, per Sanborn, J.).

In cases where the Pittsburgh Railways, Debtor, owns all or substantially all of the stock of an underlying corporation, the disregard of the corporate entity of the latter would carry its properties to the Debtor. There is, therefore, an objective to be attained by disregarding the corporate entities of any wholly-owned subsidiary of Pittsburgh Railways.

When we come to the Petitioners, however, the disregard of their corporate entities would carry their properties to their stockholders, who are public investors. The disregard of the corporate entities of Petitioners

would not result in their properties being vested in the Debtor; and the objective aimed at by the City, and, apparently, by the Circuit Court, would not be attained.

The second Conclusion of Law of the Special Master, adopted by the District Court, is as follows:

> "2. The facts do not justify the disregarding of the corporate entities of any of the underliers" (R. 836).

This conclusion is particularly applicable to Petitioners, Monongahela and Birmingham. They were in existence, as operating street railway or traction companies (SMR pars. 62, 71-73, 80, R. 632, 636, 637, 638), many years before their properties were leased to subsidiaries of Philadelphia Company (SMR par. 110, R. 641) and came into the possession of Debtor under short-term operating agreements between it and the lessee companies, Consolidated and United (SMR pars. 112-117, R. 642). Neither Monongahela nor Birmingham was organized by the Debtor, by Philadelphia Company, or by the subsidiaries of either. Petitioners have, respectively, maintained their corporate existence ever since the leases were made in 1902 (SMR pars. 799, 846, 847, R. 789, 798). None of the stock in either of the Petitioners is owned by Debtor, or its subsidiaries, or by Philadelphia Company or its subsidiaries, except a 24.7% interest in the stock of Monongahela acquired by Philadelphia Company and some of its non-railway subsidiaries after the institution of these bankruptcy proceedings (SMR par. 26, R. 618). Petitioners were not and are not controlled by Philadelphia Company or by the Debtor (SMR par. 1086, R. 834).

Monongahela and Birmingham have not merely maintained a formal corporate existence. Their officers and directors are not interlocked with those of Debtor, Philadelphia Company, or their subsidiaries or affiliates. The offices of the latter are in a different building from those of Petitioners (SMR, Pars. 846, 847, R. 798). Petitioners have handled their financial affairs, filed tax returns reporting their rentals as income, and distributed their net income as dividends. They have actively protected their interests by successfully carrying on actions against their lessees and Philadelphia Company, their guarantor, to require performance of the covenants of the leases and guaranties (SMR pars. 861, 862, R. 800, 801).

Under the facts found by the Special Master and the District Court, disregard of the corporate entities of Monongahela and of Birmingham is without basis, does not bring Petitioners or their properties into these reorganization proceedings, and is a departure from the accepted and usual course of judicial proceedings.

The Circuit Court does not claim that there is any judicial precedent for the disregard of the corporate entities of Petitioners (Opinion, R. 950).

Where the stock of a corporation is owned by the public and the corporation is not controlled by a debtor in bankruptcy reorganization, through stock ownership or otherwise, a decision that the separate entity of the corporation should be disregarded and that its properties should be treated as the properties of the debtor is a decision of an important question of Federal law which has not been, but should be, settled by this Court.

II.

In So Far as the Decision Treats the Properties of Petitioners as the Properties of Debtor, the Circuit Court Has Decided an Important Question of Local Law in a Way in Conflict With Applicable Local Decisions, and in Conflict With Decisions of Other Circuit Courts of Appeals and of This Court, as to the Binding Effect of Local Law, in Determining Property Rights.

The leases made by Petitioners and the operation of their properties, as parts of a general system of street railways, were authorized by Pennsylvania Statutes, including the Act of May 15, 1895, P. L. 63, 67 P.S. 1279, authorizing street railway companies to lease their properties and franchises to traction companies, the Act of May 15, 1895, P. L. 64, 15 P.S. 1894, authorizing such leases by one traction company to another, and the Act of May 15, 1895, P. L. 65, 15 P.S. 1897, authorizing the operation of such leased lines as a general system of different lines owned, leased, controlled, or operated by a traction company or a street railway company (SMR par. 1072, R. 827; Opinion R. 948, notes 11, 12).

That long-term leases made under these statutes are valid demises of possessory rights and that the lessors retain the ownership of the properties leased has been held by Pennsylvania courts in many decisions, including *Reeves, et al., v. Philadelphia Traction Co., et al.*, (1893), 152 Pa. 153, 165; 25 A. 516, 518; *Citizens Passenger Railway Co. v. Public Service Commission* (1921), 271 Pa. 39, 44; 114 A. 642, 644; and *Commonwealth ex rel. v. Union Traction Company of Philadelphia, et al.*, (1937), 327 Pa. 497, 516, 518; 194 A. 661, 670, 671.

That the leases of Monongahela and of Birmingham are valid leases in full force and effect has been held by the Supreme Court of Pennsylvania in *Monongahela Street Railway Co. v. Philadelphia Co. and Consolidated Traction Co.* (1944), 350 Pa. 603, 606; 39 A. (2d) 909, 911, and by the Common Pleas Court of Allegheny County, Pa., in *Pittsburgh & Birmingham Traction Co. v. Philadelphia Co. and United Traction Co.* (R. 912).

As previously pointed out, the possession of Petitioners' street railway lines by Debtor is under short-term operating agreements with Petitioners' respective lessees, Consolidated Traction Company and United Traction Company.

That these operating agreements did not convey title, but merely turned over possessory rights to Debtor, is specifically held in the case of *Second Ave. Traction Co. for use v. United Traction Co. of Pgh.* (1937), 328 Pa. 257, 259; 195 A. 25, 26, as follows:

> "The agreement of December 30, 1901, was not a conveyance to Pittsburgh [Railways] Company of any title of United [Traction] Company in the railway lines. It was merely an agreement by which United Company turned over *possession* of the lines to Pittsburgh Company for the purpose of operation. * * *" [Italics supplied by the Court]

It is submitted that, under Pennsylvania decisions and statutes, the leases made by Petitioners are valid demises of possessory rights only, and that the ownership of the demised property remains in the lessors and is not the property of the lessees or of the Debtor under its short-term operating agreements.

The Circuit Court recognized the validity of the leases under Pennsylvania law (Opinion, R. 947), but said,

> "The Pennsylvania statutes do not, nor could they, forbid or delimit the jurisdiction of a federal bankruptcy court. * * *." (Opinion, R. 948).

The answer to this proposition is two-fold: (1) Property rights in bankruptcy proceedings are determined by application of the local law of the state where the property is situated; (2) The treatment of leases, as such and not as conveyances, is provided for in federal statutes dealing with reorganization proceedings in bankruptcy.

We shall now discuss point (1) and, at page 27, *infra,* discuss point (2).

Chapter X, Section 216 (2) of the Bankruptcy Act [11 U.S.C.A. § 616] provides,—

> "A plan of reorganization under this chapter—
> "* * *
> "(2) may deal with all or any part of the property of the debtor;"

What is the property of a debtor in bankruptcy is to be determined by the application of the local state law: *Mangus v. Miller* (1942), 317 U.S. 178. This is so, not only with respect to the rights of parties to intercorporate relations, but also with respect to the rights of creditors: *Holt v. Crucible Steel Company of America* (1912), 224 U.S. 262; *Benedict v. Ratner* (1925), 268 U.S. 353; *Corn Exchange National Bank & Trust Co. v. Klauder* (1943), 318 U.S. 434.

The most recent decision of this Court on this point is *Corn Exchange Nat. Bank & T. Co. v. Klauder* (1943),

318 U.S. 434. This case involved the question of whether an assignment of accounts receivable by a creditor, prior to its bankruptcy, without notice to the debtors on the accounts, was effective as against the trustee. Sec. 60 (a) of the Bankruptcy Act [11 U.S.C.A. 96 (a)] provides that the time of transfer, for the purpose of deciding whether it was within four months of bankruptcy, shall be deemed to be the time when the transfer is so far perfected that no bona fide purchaser from the assignor and no creditor could acquire rights superior to the transferee. This Court upheld the decision of the court below, applying Pennsylvania law to the question as to whether or not a bona fide purchaser could have acquired superior rights. This Court said, referring to the Bankruptcy Act (p. 436):

> "* * * Its apparent command is to test the effectiveness of a transfer, as against the trustee, by the standards which applicable state law[8] would enforce against a good-faith purchaser. * * *"

In note 8, referred to, it is said:

> "Questions of this sort arising in bankruptcy cases were solved by reference to state law even before the decision of Erie R. Co. v. Tompkins, 304 U.S. 64 * * *."

The rule, as to the binding effect of state law, has been applied in bankruptcy cases by various Circuit Courts of Appeals, including *Sweeney v. Medler*, 78 F. (2d) 148, (C.C.A. 10, 1935); *McCance, et al., v. D. A. Schulte, Inc., of New York*, 91 F. (2d) 733, (C.C.A. 2, 1937); *Miller v. McCray Refrigerator Co.*, 130 F. (2d) 873, (C.C.A. 8, 1942).

In *In re Kearns et al.*, 8 F. (2d) 437, (C.C.A. 4, 1925) [certiorari denied 269 U.S. 587], the question

was whether or not an estate by the entireties, of which a bankrupt was one of the tenants, could be subjected to payment of his debts.

The Circuit Court of Appeals (4th) said in its opinion (p. 437)—

> "* * * Hence, if an estate by entireties under North Carolina law cannot be subjected to the payment of debts of either tenant during the period of their joint lives, this court would, in administering the bankruptcy law, follow and adopt the construction and interpretation placed by the state upon its own Constitution and laws, as the rule of property within the state."

The *Kearns* case was followed in *Dioguardi v. Curran,* 35 F. (2d) 431, (C.C.A. 4, 1929).

It was held in *Finn v. 415 Fifth Ave.,* 153 F. (2d) 501, (C.C.A. 2, 1946) [certiorari denied May 6, 1946, 66 S. Ct. 1014], that the New York Rent Control Law applies to the tenancy of a trustee in bankruptcy reorganization of a lessee company.

In so far as the public interest is concerned, the validity of leases of street railway properties and operating agreements thereunder in intrastate transportation, is to be determined by state law. Pennsylvania has expressly authorized such leases and operating agreements by the statutes referred to at page 21 above. There is no federal statute containing any provisions to the contrary. Jurisdiction of a Bankruptcy Court to interfere with the exercise of the powers of a State to regulate local transportation and intercorporate relations, between companies engaged therein, can not be assumed without clear authorization by Act of Con-

gress: *Palmer v. Commonwealth of Massachusetts* (1939), 308 U.S. 79, 84.

It is submitted that the decision of the Circuit Court, in so far as it purports to hold that the leases made by Petitioners are conveyances or that the properties leased are to be treated as properties owned by the Debtor for the purpose of reorganization, is contrary to the applicable law of Pennsylvania and conflicts with decisions of this Court and of Circuit Courts of Appeals of other Circuits, as to the law applicable in the determining of property rights in bankruptcy proceedings.

It is further submitted that the Circuit Court erred in so far as its decision purports to set aside the third Conclusion of the Special Master, adopted by the District Court, to the effect that leases for terms of years, whether long or short, as between the parties, their creditors, or for the purpose of the reorganization of the leaseholder under the Bankruptcy Laws, are not equivalent to conveyances in fee with reservations of liens or qualified titles as mere security for the payment of moneys.

III.

The Treatment of Leases as Demises of Possessory Rights Is Provided for in the Bankruptcy Laws and Is Sustained by Decisions of This Court in Railroad Reorganizations. In So Far as the Decision of the Circuit Court Departs from Such Treatment, the Exercise of This Court's Power of Supervision Is Called For.

As pointed out (p. 23, *supra*), the Opinion of the Circuit Court states, in effect, that Pennsylvania statutes cannot forbid or delimit the jurisdiction of a federal bankruptcy court (Opinion, R. 948).

This statement was made in discussing the leases made by Petitioners and seems to carry the implication that Pennsylvania statutes and decisions, holding the leases to be valid demises of possessory rights only, impinge on the treatment of such leases by the federal bankruptcy laws.

But the bankruptcy laws recognize the validity of leases, provide how they shall be treated, and preserve the ownership of the lessors in the fee.

Chapter X of the Bankruptcy Act, Section 106 (7) defines executory contracts, as follows:

> "(7) 'executory contracts' shall include unexpired leases of real property;" [11 U.S.C.A. § 506 (7)].

Section 116 (1) provides that the Judge may "permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties

in interest as the judge may designate;" [11 U.S.C.A. § 516 (1)].

Leases of railway properties are not "contracts in the public authority", and can be rejected: *In Re Chicago Rapid Transit Co.,* 129 F. (2d) 1, 8, (C.C.A. 7, 1942).

Section 216 (4) provides that a plan of reorganization "may provide for the rejection of any executory contract except contracts in the public authority;" [11 U.S.C.A. § 616 (4)].

It is evident from the terms of the Bankruptcy Law that rejection of a lease is to be followed by repossession by the lessor.

Chapter X, § 202, of the Bankruptcy Act reads, in part, as follows:

> "* * * The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of *the surrender of the premises to the landlord or the date of reentry of the landlord,* whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to such date of surrender or reentry: * * *." [11 U.S.C.A. § 602]. [Italics supplied.]

The procedure followed under the parallel provisions of Section 77 of the Bankruptcy Act, dealing with railroad reorganizations, shows the accepted method of dealing with burdensome leases. That method is to reject them and return the leased properties to the lessor,

unless an offer for the purchase or lease of such properties under new terms is accepted by the lessor.

In *Palmer, et al. v. Connecticut Railway & Lighting Co.* (1941), 311 U.S. 544, involving the reorganization in bankruptcy of a railroad company, the lease of a street railway property was rejected, the property returned to the lessor, and the lessor permitted to file a claim for damages, by reason of the rejection of the lease. In this case, this Court upheld the validity of long-term leases in these words (p. 555)—

> "Litigation over a 999-year lease naturally brings up incidents difficult to reconcile with known and established legal formulae. Since conveyancers and business men alike have long utilized the characteristic provisions of leases to accomplish transfers of rights in real estate for extensive periods without payment of the purchase price, *such long term agreements have become a well recognized legal implement, especially in corporate realty transactions and railroad consolidations and mergers. Its reservations of rent, provisions for taxes and operation are firmly embedded in our financial, corporate and title structures.* * * *." [Italics supplied].

The Circuit Court of Appeals would, it appears (Opinion R. 948), upset the integrity of long-term railway leases, as established by this Court and embedded in our financial and title structures. Stocks of lessor railroad corporations are listed and prices quoted in daily and Sunday New York newspapers, under the heading "Guaranteed Stocks", and are traded in extensively. Such stocks are authorized investments for life insurance companies in New York (27 McKinley's Consolidated Laws of New York, Par. 81).

In *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co.* (1943), 318 U.S. 523, a railroad reorganization proceeding, a lease of a railroad was ordered to be rejected, unless a new offer, made to the lessor, was accepted.

In the reorganization of the *New York, New Haven & Hartford Railroad,* the lease of the Boston and Providence properties was rejected and an offer to purchase these properties was made, conditioned on approval by the lessor: *In re New York, N. H. & H. R. Co.* (1943), 54 Fed. Supp. 595, affirmed by the Second Circuit Court of Appeals in *In re New York, New Haven & Hartford R. Co.* (1945), 147 F. (2d) 40, 51.

This Court recently, in the case of *Smith v. Hoboken Railroad, etc.,* decided April 29, 1946, 90 L. Ed Adv. Ops. 880, held that the lessor could not exercise his right of forfeiture where the properties were in possession of the lessee in the course of railroad reorganization. This Court said in its Opinion (90 L. Ed. Adv. Ops. 886):

> "* * * The Commission [Interstate Commerce Commission] may decide that it is in the public interest as well as in the interest of the private claimants that a lease be adopted. * * * Or it may conclude, as it did in Group of Institutional Investors v. Chicago, M. St. P. & P. R. Co. supra (318 U.S., pp 546-555, * * *), that a lease should be rejected unless the lessor consented to a revision of its terms. * * *."

In Re Chicago Rapid Transit Co., 129 F. (2d) 1, (C.C.A. 7, 1942), the Court permitted the rejection by a street railway company in bankruptcy reorganization of the lease of an elevated railroad, a part of its system. The Court said, at page 6:

> "* * * It could reject the lease and free the estate of the burden thereof. It could not order abandonment of service. It could not make a new contract between the parties. * * *"

This Court, in a case arising out of the present bankruptcy proceedings, clearly indicated that the proper method of dealing with leases, involved in this proceeding, was either by affirmance or rejection thereof by the Trustees of the Debtor or by forfeiture of the leases by the lessors. This Court said:

> "Notwithstanding the fact that § 77B gives no specific authority to trustees in reorganization to reject burdensome leases or contracts,* it is well settled that they have that right and are accorded a reasonable time within which to exercise it. If, in the opinion of the officers of the underlying companies, a reasonable time has expired those companies are not without redress. They may declare a forfeiture of the leases and abrogate the agreements for nonperformance on the part of the trustees or, they may apply to the District Court to compel an election by the trustees, to affirm or disaffirm. * * *." (*Philadelphia Company v. Dipple* (1941), 312 U.S. 168, 174.

There is nothing in the Bankruptcy Statutes, or in any of the decisions interpreting and applying them, which authorizes leases of intrastate utilities, authorized by state laws, to be ignored and the properties of independently owned companies to be treated as the properties of a Debtor for the purpose of reorganization.

---

* Such authority is now conferred by Chapter X, (*supra*, p. 27).

In so far as the opinion of the Circuit Court of Appeals sanctions a treatment of leases, other than that provided for by Congress, it is a departure from the accepted and usual course of judicial proceedings in bankruptcy reorganization.

Admittedly without judicial precedent (Opinion, R. 950) and, as we have shown, contrary to the provisions, with respect to leases, in the Bankruptcy laws, the Circuit Court appears to hold that the properties of lessor corporations may be treated as the properties of an operating corporation in bankruptcy reorganization.

It is submitted that this raises an important question of federal law which should be settled by this Court.

IV.

In So Far as the Decision of the Circuit Court Holds That, Without Filing and Approval of Petitions by or Against Them, Petitioners Can Be Reorganized in Bankruptcy or Their Properties Dealt With as Properties of a Debtor, the Decision Has so Far Departed from the Accepted and Usual Course of Judicial Proceedings as to Call for the Exercise of This Court's Power of Supervision.

The fifth Conclusion of Law of the Master, adopted by the District Court, is, as follows:

> "5. Without the filing and approval of petitions by or against the several underliers in the manner and form prescribed by the Act of Congress relating to Bankruptcy, this court does not have jurisdiction to reorganize such underliers under such Act or to deal with their properties as though

they were the properties of a 'debtor' as the term 'debtor' is defined in such Act." (R. 837).

The Opinion of the Circuit Court states, in effect, that the single, but very important, legal question in this case "relates to the power of the court to grant the City's petition by pulling into the [re]organization, willy nilly, the underliers." (Opinion, R. 943).

Our contention is that Petitioners can not be pulled into bankruptcy reorganization proceedings "willy", unless they file voluntary petitions to that end; and can not be pulled in "nilly", unless petitions are filed against them by three or more creditors. No such petitions have been filed.

Congress has provided the procedure for putting corporations into reorganization in bankruptcy and has stated the financial condition of a corporation requisite to justify such proceedings.

Section 126 of Chapter X of the Bankruptcy Act reads, as follows:

> "A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to $5,000 or over, * * * may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter." [11 U.S.C.A. § 526].

Chapter X sets forth what facts the petition must state, among others as follows:

> *"Section 130.* Every petition shall state—
>
> "(1) that the corporation is insolvent or unable to pay its debts as they mature;" [11 U.S.C.A. § 530].

> *"Section 131.* A creditors' or indenture trustee's petition shall, in addition to the allegations required by Section 130 of this Act, state—
>
> "* * *
>
> "(5) that the corporation has committed an act of bankruptcy within four months prior to the filing of the petition." [11 U.S.C.A. § 531].

The opinion of the Circuit Court (R. 944) states that the Guaranteed Underliers (which include Petitioners) are not insolvent. The Special Master and the District Court found as a fact that it did not appear that Petitioners were unable to pay their debts as they mature (SMR par. 57, R. 631). It is not pretended that either of Petitioners has committed an act of bankruptcy.

No petition can be filed in behalf of a corporation except by persons authorized so to act. This was recently so held by this Court in the case of *Price v. Gurney* (1945), 324 U.S. 100. This Court said, at page 107:

> "* * * But nowhere is there any indication that Congress bestowed on the bankruptcy court jurisdiction to determine that those who in fact do not have the authority to speak for the corporation as a matter of local law are entitled to be given such authority and therefore should be empowered to file a petition on behalf of the corporation. * * *."

It may be contended that Petitioners are "subsidiaries" under the definition in Section 106 (13) [11 U.S.C.A. § 506] of Chapter X of the Bankruptcy Law as "* * * a corporation substantially all of whose properties are operated under lease or operating agreement, * * *." This definition is stated to be only for the purposes of Chapter X [11 U.S.C.A. § 506]. The only section of Chapter X where the word "subsidiary" is

used, other than that wherein it is defined, is Section 129 [11 U.S.C.A. § 529], which provides that a petition by or against a subsidiary may be filed "in the court which has approved the petition by or against its parent corporation". The statutory definition of "subsidiary", above referred to, has no application whatsoever in these proceedings; because no petition has been filed by or against either of Petitioners and none is in prospect.

Just before the final printing hereof, we learned of a decision by the Circuit Court of Appeals for the Third Circuit which was filed July 17, 1946, as amended by order of July 23, 1946, and which is not yet officially reported. The case is entitled *"New York Trust Company, as Trustee of The New York and Greenwood Lake Railway Company Prior Lien Mortgage Deed dated May 1, 1896, v. The New York and Greenwood Lake Railway Company."*

The Opinion states (p. 5)—

> "The substantial problem on this appeal is which of the two District Courts (Ohio and New Jersey) has authority to pass upon the fees requested * * *."

The reason for our calling attention to this case is that it quotes from and appears to rely upon the opinion of the Circuit Court in the case at bar, as justifying the bringing into the reorganization of a railroad company in bankruptcy of a subsidiary of the Debtor, without the filing of a petition in bankruptcy reorganization by or against the subsidiary.

This application of the decision of the Circuit Court in the case at bar, we believe, constitutes a cogent

reason for the grant of our Petition; because of the importance of settling an important question in the application of the bankruptcy laws.

The decision in the case cited is that a claim for services in the reorganization of a railroad corporation in bankruptcy should be heard and decided by the bankruptcy court. Why that should require the reorganization therein of the Greenwood Railway does not appear.

The facts in the case cited are essentially different from those in the case at bar, thus:

(1) Claimants had participated in the Erie Railroad bankruptcy proceedings as general parties and had been allowed fees for services; whereas Petitioners have made no claims in the present proceedings and appeared specially therein only in support of their petitions to dismiss the City's petition, as to them;

(2) Erie Railroad Company owned 95% of the stock of Greenwood Railway and 98.4% of its bonds; whereas, Pittsburgh Railways owns none of the stock of Petitioners and none of their bonds;

(3) Erie Railroad held a 999 year lease from Greenwood Railway; whereas, Debtor was merely in possession of Petitioners' street railways under short-term operating agreements with their lessees.

The Purpose and Subject-Matter of Bankruptcy Reorganization.

The purpose of bankruptcy reorganization of a corporation has been described in *Sartorius v. Bardo,* 95 F. (2d) 387, 389, (C.C.A. 2, 1938), as follows:

"A proceeding under Section 77B seeks the rehabilitation of the *debtor,* and can have no further purpose; as soon as it appears that this is impossible, subdivision (c) (8) declares that the court 'may' dismiss it, or proceed to liquidation. * * *" [Italics supplied]

The subject-matter of reorganization is stated in the case of *In Re Chicago R. I. & P. Ry. Co.,* 50 F. Supp. 835, D.C.N.D. Illinois (1943) at page 849, as follows:

"* * * What is the subject-matter of reorganization? Obviously, it is not the lines of railway which are being reorganized, but the debtor's financial structure. * * *"

The Opinion of the Circuit Court of Appeals says that "the facts of the present case call for the treatment of this great transportation system as one entity for purposes of reorganization, * * *." (Opinion, R. 951).

But Congress has provided for the reorganization in bankruptcy of corporations, not systems or lines of railway. Congress has provided only for the reorganization in bankruptcy of corporations which are insolvent or unable to pay their debts as they mature; and then, only by petitions filed and approved by or against them.

It is submitted that Monongahela and Birmingham can not be reorganized in bankruptcy, unless petitions by or against them are filed and approved and the facts set forth therein, as required by the Bankruptcy Act.

It is further submitted that, unless Petitioners are subjected to bankruptcy reorganization, their properties can not be dealt with as the properties of a debtor in reorganization.

Conclusion.

It is submitted that the Decree of the District Court, dismissing the Petition of the City of Pittsburgh, should be sustained; that the Circuit Court of Appeals erred in reversing that Decree and remanding the case for further proceedings not inconsistent with its Opinion; and that the Orders and Decrees of the Circuit Court of Appeals should be reversed.

It is further submitted that this Petition for Writs of Certiorari should be granted; because the decision of the Circuit Court of Appeals conflicts with the decisions of other Circuit Courts of Appeals; decides an important question of local law in a way in conflict with applicable local decisions; decides an important question of Federal Law which has not been, but should be, settled by this Court; decides Federal questions in a way in conflict with applicable decisions of this Court; and has so far departed from the accepted course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Respectfully submitted,

WM. S. MOORHEAD
A. W. HENDERSON
JUDSON A. CRANE
Attorneys for Petitioners.

JOINDERS IN THE FOREGOING PETITION FOR WRITS OF CERTIORARI.

The following named corporations severally join in the foregoing Petition for writs of certiorari and adopt the foregoing Brief.

Each of the undersigned corporations leased its street or incline railway properties to Pittsburgh and Birmingham Traction Company, one of the Petitioners to the foregoing Petition (SMR 71, R. 636). Said leases are in full force and effect and the demised premises are in the possession of the Trustees for the Debtor in these proceedings, under operating agreements. Each of the undersigned corporations made a motion to dismiss, as to it, the petition of the City of Pittsburgh (R. 880-884). Each joined in the Brief filed by the above named Petitioners with the Circuit Court of Appeals on the appeal of the City.

PITTSBURGH AND BIRMINGHAM PASSENGER RAILROAD COMPANY,

THE SOUTH SIDE PASSENGER RAIL ROAD COMPANY,

By Wm. S. Moorhead.....

Wm. S. Moorhead, their attorney,
1732 Oliver Bldg., Pittsburgh, Pa.

PITTSBURGH INCLINE PLANE COMPANY,

By W. St. Clair Childs.....

W. St. Clair Childs, its attorney,
207 Oliver Bldg., Pittsburgh, Pa.

The Suburban Rapid Transit Street Railway Company joins in the foregoing Petition for writs of certiorari and adopts the foregoing Brief.

The undersigned leased its street railway properties to Consolidated Traction Company, by a lease similar to the leases of the above named Petitioners. The material parts of the Suburban lease and guaranty are printed in R. 922-937, inclusive. The lease is in full force and effect. (R. 937; SMR par. 840, R. 796.) The demised premises are in the possession of the Trustees for the Debtor in these proceedings.

Philadelphia Company owns 6.6% of the capital stock of Suburban, the balance being owned by the public. (SMR par. 26, R. 618.) In all material respects the position of Suburban is the same as that of the Petitioners.

The undersigned made a motion to dismiss, as to it, the petition of the City of Pittsburgh (R. 17 a) and filed a brief with the Circuit Court of Appeals on the appeal of the City.

THE SUBURBAN RAPID TRANSIT STREET RAILWAY COMPANY,

By ...Richard W. Ahlers.....

Richard W. Ahlers, its attorney,
1310 Commonwealth Building,
Pittsburgh 22, Pa.